(2)

No. 05-1446

FILED
OCT 19 2006

In The

Supreme Court of the United States

EDWARD SMITH,

Petitioner,

v.

AMERICAN ARBITRATION ASSOCIATION, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR REHEARING

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October 2006

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PETITION FOR REHEARING

Petitioner, Edward Smith ("Smith"), respectfully moves this Court for an order vacating the denial of his petition for a writ of certiorari entered on October 2, 2006, and granting the petition. As grounds for this motion, the Court has failed to uphold the United States Constitution Amendment 14 § 1 by denying Smith equal protection of the law, that allowed the judgment of the lower court to stand which was obtained by fraud in this case.

I. THE COURT HAS FAILED TO UPHOLD THE UNITED STATES CONSTITUTION AMENDMENT 14 § 1.

The petition for certiorari previously filed herein presented the question whether or not, "the arbitrator engaged in nonjudicial actions," regarding Petitioner's motion for contempt. In support of the question presented which included the transcript as direct evidence, the arbitrator states, "I don't have the power to hold a party or an attorney in contempt." The arbitrator's own words clearly show that he failed to take actions on the motion for contempt in his quasi-judicial capacity. The Petitioner was denied equal protection of the law by this Court that prevented the opportunity to address the issue previously determined in *Mireles v. Waco*, 502 US. 9 (1991).

As provided under the provision of the United States Constitution Amendment 14 § 1 guarantee that no State shall deprive any person of life, liberty or property, without due process of law, nor deny to any person equal protection of the law and requires that the wrongful conduct of private individuals have some connection to state authority to be actionable under the Fourteenth

Amendment. The Petitioner, Edward Smith possess a property interest arising out of his claim is subject to "equal protection of the law," which is not a matter of judicial discretion but of a fundamental right.

II. FEDERAL RULE OF CIVIL PROCEDURE 60(B)(3), PROVIDES THAT THE COURT MAY RELIEVE A PARTY FROM A FINAL JUDGMENT FOR FRAUD.

In this case, Smith alleges that the award by the American Arbitration Association ("AAA") was obtained by fraud, as a result of the arbitrator failing to take judicial actions on his motion for contempt, and according to the transcript as direct evidence states in the arbitrator's own words, "I don't have the power to hold a party or an attorney in contempt." Petitioner filed suit in district court, named as a defendant, the AAA, "**LIED**" to the court in its motion to dismiss by stating that, "Petitioner's motion for contempt was directly addressed and refuted by the arbitrator's written ruling." Because of the misleading of facts given by the AAA, the court dismissed Petitioner's complaint which constitutes a judgment obtained by **fraud.** *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238, 997 (1944).

Furthermore, the Respondent in this case could not produce any evidence to the court to show that the Petitioner's motion for contempt was directly addressed and refuted by the arbitrator.

The Court may relieve a party from a final judgment for fraud as provided under the Federal Rule of Civil Procedure 60(b)(3). The lower court judgment obtained by

fraud cannot be allowed to be maintained, as a matter of law or a matter of equity.

CONCLUSION

For the reasons set forth in this Petition for Rehearing, as well as in the petition for certiorari previously filed, rehearing and certiorari should now be granted.

Respectfully submitted,

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October 18, 2006

CERTIFICATION

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44-2.

EDWARD SMITH